

Senate File 493

H-8273

1 Amend Senate File 493, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. By striking everything after the enacting clause
4 and inserting:
5 <Section 1. NEW SECTION. 499A.1A Applicability.
6 This chapter shall apply to cooperatives established
7 under this chapter unless otherwise provided in chapter
8 499C.
9 Sec. 2. NEW SECTION. 499B.1A Applicability.
10 This chapter shall apply to horizontal property
11 regimes established under this chapter unless otherwise
12 provided in chapter 499C.
13 Sec. 3. Section 499B.15, subsection 2, Code 2011,
14 is amended by striking the subsection.
15 Sec. 4. NEW SECTION. 499B.21 Board of
16 administration — meetings and records.
17 1. For horizontal property regimes with eight or
18 more apartments, if the form of administration is a
19 board of administration, the board of administration
20 shall comply with the requirements of chapter 499C.
21 2. For horizontal property regimes with seven or
22 less apartments, if the form of administration is a
23 board of administration, the board of administration
24 shall comply with the requirements of section 499C.401,
25 subsection 2, and sections 499C.402 and 499C.403.
26 Sec. 5. NEW SECTION. 499C.101 Title.
27 This chapter shall be known and cited as the "*Iowa*
28 *Common Interest Ownership Act*".
29 Sec. 6. NEW SECTION. 499C.102 Public policy.
30 The general assembly declares that it is the public
31 policy of the state that the management and affairs of
32 common interest communities be conducted openly, and
33 this chapter shall be construed to provide open access
34 to the management of the common interest community to
35 the unit owners.
36 Sec. 7. NEW SECTION. 499C.103 Definitions.
37 As used in this chapter, unless the context
38 otherwise requires:
39 1. "*Bylaws*" means the instruments, however
40 denominated, that contain the procedures for conducting
41 the affairs of the unit owners association or the
42 executive board regardless of the form in which the
43 association is organized, including any amendments to
44 such instruments.
45 2. "*Common element*" means:
46 a. For a cooperative under chapter 499A or a
47 horizontal property regime under chapter 499B, all
48 portions of the common interest community other than
49 the units.
50 b. For a planned community, any real estate within

1 the planned community which is owned or leased by the
2 unit owners association, other than a unit.

3 c. For all common interest communities, any other
4 interests in real estate for the benefit of unit owners
5 which are subject to the declaration.

6 3. a. *"Common interest community"* means real estate
7 described in a declaration with respect to which a
8 person, by virtue of the person's ownership of a unit,
9 is obligated to pay for a share of real estate taxes,
10 insurance premiums, maintenance, or improvement of, or
11 services or other expenses related to, common elements,
12 other units, or other real estate described in the
13 declaration. *"Common interest community"* includes
14 a cooperative under chapter 499A and a horizontal
15 property regime under chapter 499B.

16 b. Common interest community does not include:

17 (1) A covenant that requires the owners of separate
18 parcels of real estate to share costs or other
19 obligations related to a wall, driveway, well, or other
20 similar structure, unless all such owners consent in
21 writing to the creation of a common interest community.

22 (2) Real estate described in paragraph "a" if all
23 units are owned by a single unit owner.

24 4. *"Declarant"* means any person or group of persons
25 who, as the record title owner of real estate, by
26 a declaration, initially creates a common interest
27 community.

28 5. *"Declaration"* means the instrument, however
29 denominated, that creates a common interest community,
30 including any amendments to the instrument.

31 6. *"Executive board"* means the body, regardless of
32 name, designated in the declaration or bylaws to act on
33 behalf of the unit owners association.

34 7. *"Planned community"* means a common interest
35 community that is not a cooperative under chapter 499A
36 or a horizontal property regime under chapter 499B,
37 and includes property owner or homeowner associations.
38 However, a cooperative under chapter 499A or a
39 horizontal property regime under chapter 499B may be
40 part of a planned community.

41 8. *"Rule"* means a policy, guideline, restriction,
42 procedure, or regulation, however denominated, which is
43 not set forth in the declaration or bylaws.

44 9. *"Unit"* means a physical portion of the common
45 interest community designated for separate ownership or
46 occupancy or as otherwise defined in the statute under
47 which the common interest community is organized.

48 10. *"Unit owner"* means a declarant or other person
49 that owns a unit, but does not include a person
50 having an interest in a unit solely as security for

1 an obligation. In a horizontal property regime under
2 chapter 499B or a planned community, the declarant is
3 the owner of any unit created by the declaration. In
4 a cooperative under chapter 499A, the declarant is
5 the owner of any unit to which an interest has been
6 allocated until that unit has been conveyed to another
7 person.

8 11. *"Unit owners association"* means an association,
9 regardless of name, organized as a for-profit or
10 nonprofit corporation, trust, limited liability
11 company, partnership, unincorporated association,
12 or any other form of organization authorized by the
13 laws of this state, the membership of which consists
14 solely of unit owners except following termination
15 of the common interest community, at which time the
16 association shall consist of all former unit owners
17 entitled to distributions of proceeds or their heirs,
18 successors, or assigns.

19 Sec. 8. NEW SECTION. 499C.104 Variation by
20 agreement.

21 Except as expressly provided in this chapter,
22 the provisions of this chapter may not be varied
23 by agreement, and rights conferred by it may not be
24 waived.

25 Sec. 9. NEW SECTION. 499C.105 Applicability.

26 Unless otherwise provided by law:

27 1. This chapter applies to common interest
28 communities within this state having eight or more
29 units.

30 2. Any portion of a declaration, bylaws, covenant,
31 or other contractual provision existing prior to
32 July 1, 2012, that violates or is inconsistent with
33 this chapter is not enforceable. However, nothing in
34 this chapter shall be construed to invalidate other
35 provisions of the declaration, bylaws, plats, or plans
36 of those common interest communities established before
37 July 1, 2012.

38 3. The provisions of this chapter shall prevail
39 over any conflicting provision of law under which a
40 common interest community or unit owners association
41 is organized.

42 Sec. 10. NEW SECTION. 499C.201 Unit owners
43 association — executive board.

44 1. A unit owners association shall have an
45 executive board.

46 2. Except as otherwise provided in the declaration,
47 the bylaws, subsection 3 of this section, or provisions
48 of the statute under which the common interest
49 community is organized, an executive board acts on
50 behalf of the unit owners association.

1 3. An executive board shall not act on behalf of
2 the unit owners association to amend the declaration,
3 to terminate the common interest community, to elect
4 members of the executive board, or determine the
5 qualifications, powers and duties, or terms of office
6 of executive board members. An executive board may
7 fill vacancies in its membership for the unexpired
8 portion of any term.

9 4. A declaration may provide for a period of
10 declarant control of the unit owners association,
11 during which a declarant, or persons designated by the
12 declarant, may appoint and remove the officers and
13 members of the executive board. For declarations filed
14 on or after July 1, 2012, a period of declarant control
15 shall be clearly defined in the declaration.

16 **Sec. 11. NEW SECTION. 499C.401 Meetings.**

17 1. Meetings of a unit owners association, whether
18 such association is incorporated or unincorporated,
19 shall comply with all of the following:

20 a. A unit owners association shall hold a meeting
21 of unit owners annually at a time, date, and place
22 stated in or determined in accordance with the
23 declaration or bylaws.

24 b. A unit owners association shall hold a special
25 meeting of unit owners to address any matter affecting
26 the unit owners association if the association's
27 president, a majority of the executive board, or an
28 amount of unit owners comprising at least forty percent
29 of all votes in the association, unless a different
30 percentage is specified in the bylaws, request that
31 the secretary call the meeting. If the unit owners
32 association does not notify unit owners of a special
33 meeting within thirty days after the required number
34 of unit owners has requested the secretary to call a
35 special meeting, the requesting members may directly
36 notify all unit owners of the meeting. Only matters
37 described in the meeting notice may be considered at a
38 special meeting.

39 c. A unit owners association shall notify each
40 unit owner of the time, date, and place of each annual
41 and special unit owners meeting not less than ten
42 days and not more than sixty days before the meeting
43 date. Notice may be by any means described in section
44 499C.403. Each meeting notice shall state the time,
45 date, and place of the meeting and the items on the
46 agenda in a manner reasonably calculated to apprise
47 the unit owners of that information, including but not
48 limited to:

49 (1) A statement of the general nature of any
50 proposed amendment to the declaration or bylaws.

1 (2) A statement describing any budget changes.
2 (3) Any proposal to remove an officer or member of
3 the executive board.
4 d. The requirements relating to the timing of
5 meeting notices under paragraph "c" may be reduced or
6 waived for a meeting called to address an emergency. A
7 meeting called to address an emergency shall be limited
8 to matters arising out of the emergency.
9 e. Each unit owner shall be given a reasonable
10 opportunity at any meeting to comment on any matter
11 affecting the common interest community or the unit
12 owners association.
13 f. The declaration or bylaws may allow for meetings
14 of unit owners to be conducted by telephonic, video, or
15 other conferencing method, if such method is consistent
16 with subsection 2, paragraph "g".
17 2. Meetings of the executive board and committees
18 of the unit owners association, authorized to act for
19 the unit owners association, shall comply with all of
20 the following:
21 a. Meetings shall be open to the unit owners except
22 during executive sessions. The executive board and
23 committees of the unit owners association may hold an
24 executive session only during a regular or special
25 meeting of the board or the committee. No final
26 vote or final action may be taken during an executive
27 session. An executive session may only be held for the
28 following reasons:
29 (1) To consult with the unit owners association's
30 attorney concerning legal matters governed by
31 attorney-client privilege.
32 (2) To discuss existing or potential litigation or
33 mediation, arbitration, or governmental administrative
34 proceedings.
35 (3) To discuss matters relating to the job
36 performance, compensation, or health records of an
37 individual employee or specific complaints against an
38 individual employee of the unit owners association or
39 against an independent contractor employed by the unit
40 owners association.
41 (4) To discuss contracts, leases, and other
42 commercial transactions for goods or services that are
43 under negotiation, including the review of bids or
44 proposals, if public disclosure of such matters would
45 place the unit owners association at a disadvantage.
46 (5) To discuss personal, health, or financial
47 information relating to a unit owner, a specific
48 employee of the unit owners association, or a specific
49 employee of an independent contractor retained by the
50 unit owners association, including any records of the

1 unit owners association relating to such information.
2 *b.* For purposes of this section, a gathering of
3 board members at which the board members do not conduct
4 unit owners association business is not a meeting of
5 the executive board. Executive board members shall not
6 use incidental or social gatherings of board members
7 or any other method to evade the meeting and notice
8 requirements of this section.
9 *c.* During a period of declarant control, the
10 executive board shall meet at least one time each
11 year. At least one of the meetings shall be held at
12 the common interest community or at a place convenient
13 to the unit owners of the common interest community.
14 After termination of the period of declarant control,
15 all executive board meetings shall be at the common
16 interest community or at a place convenient to the unit
17 owners of the common interest community unless the unit
18 owners amend the bylaws to vary the location of such
19 meetings.
20 *d.* At each executive board meeting, the executive
21 board shall provide a reasonable opportunity for unit
22 owners to comment on any matter affecting the common
23 interest community and the unit owners association.
24 *e.* Unless the meeting is included in a schedule
25 given to the unit owners or the meeting is called to
26 address an emergency, the secretary or other officer
27 specified in the bylaws shall give notice of each
28 executive board meeting to each executive board member
29 and to each unit owner. Such notice shall be given at
30 least ten days before the meeting and shall state the
31 time, date, place, and agenda of the meeting.
32 *f.* If any materials are distributed to the
33 executive board before a meeting, the executive board,
34 upon receipt of the materials, shall make copies
35 reasonably available to unit owners, except that the
36 executive board is not required to make available
37 copies of unapproved minutes or materials that are to
38 be considered during an executive session.
39 *g.* Unless otherwise provided in the declaration or
40 bylaws, the executive board may conduct a meeting by
41 telephonic, video, or other conferencing method if all
42 of the following conditions are met:
43 (1) The meeting notice states the conferencing
44 method to be used and provides information explaining
45 how unit owners may participate in the conference
46 directly or by meeting at a central location or
47 conference connection.
48 (2) The process provides all unit owners the
49 opportunity to hear or perceive the discussion and to
50 comment on matters before the executive board.

1 *h.* Following termination of the period of declarant
2 control, unit owners may amend the bylaws to vary the
3 procedures for meetings described in paragraph "g".

4 *i.* In lieu of a meeting, the executive board may
5 act by unanimous consent if such action is documented
6 in a record authenticated by all executive board
7 members. The secretary shall give prompt notice to all
8 unit owners of any action taken by unanimous consent.

9 After termination of the period of declarant control,
10 an executive board may act by unanimous consent only to
11 undertake ministerial actions or to implement actions
12 previously taken at a meeting of the executive board.

13 *j.* Unless otherwise restricted by this chapter or
14 the common interest community's bylaws, an executive
15 board may determine rules of procedure for the
16 executive board.

17 *k.* An executive board may remove any person from
18 a meeting of the executive board upon a finding by a
19 majority of the board members that the person is being
20 disruptive to the meeting. An executive board may bar
21 any person from meetings of the executive board or
22 other meetings of the common interest community for a
23 period of up to one year if the person has been twice
24 removed from a meeting within the preceding twelve
25 months.

26 *l.* An action by an executive board that is not
27 in compliance with this section is valid unless
28 invalidated by a court. A challenge to the validity of
29 an action of the executive board for failure to comply
30 with this section shall not be brought more than sixty
31 days after the minutes of the executive board of the
32 meeting at which the action was taken are approved
33 or the record of that action is distributed to unit
34 owners, whichever is later.

35 Sec. 12. NEW SECTION. **499C.402 Association**
36 **records.**

37 1. A unit owners association shall retain all of
38 the following:

39 *a.* Detailed records of receipts and expenditures
40 relating to the operation and administration of
41 the unit owners association and other appropriate
42 accounting records.

43 *b.* Minutes of all unit owners meetings and
44 executive board meetings, a record of all actions taken
45 by the unit owners or the executive board without
46 a meeting, and a record of all actions taken by a
47 committee in place of the executive board on behalf
48 of the unit owners association. The minutes retained
49 by the unit owners association shall indicate the
50 date, time, and place of the meeting, the names of all

1 persons present at the meeting, and each action taken
2 at the meeting. The minutes shall also include the
3 results of each vote taken at the meeting, including
4 information indicating the vote of each executive
5 board member present at the meeting. The vote of each
6 executive board member present shall be made public at
7 the open session.

8 *c.* The names of all unit owners in a form that
9 permits preparation of a list of the names of all
10 owners and the regular mail or electronic mail address
11 at which the unit owners association communicates
12 with them, and the number of votes each unit owner is
13 entitled to cast.

14 *d.* The unit owners association's original and
15 amended organizational documents, bylaws, including all
16 amendments to the bylaws, and all rules of the common
17 interest community currently in effect.

18 *e.* All financial statements and tax returns of the
19 unit owners association for the past three years.

20 *f.* A list of the names and addresses of the current
21 executive board members and officers.

22 *g.* The unit association's most recent annual report
23 delivered to the secretary of state, if applicable.

24 *h.* Copies of each contract to which the unit owners
25 association is currently a party.

26 *i.* Records of executive board or committee actions
27 relating to requests for design or architectural
28 approval from unit owners.

29 *j.* Ballots, proxies, and other records related to
30 voting by unit owners for one year after the election,
31 action, or vote.

32 2. Except as provided under subsections 3 and
33 4, all records retained by a unit owners association
34 must be available for examination and copying by a
35 unit owner or the unit owner's authorized agent during
36 reasonable business hours or at a mutually convenient
37 time and location upon providing a five days' notice
38 that reasonably identifies the specific records that
39 are being requested.

40 3. Records retained by a unit owners association
41 may be withheld from inspection and copying to the
42 extent that they concern:

43 *a.* Personally identifiable information, salary, and
44 medical records relating to specific individuals.

45 *b.* Information relating to contracts, leases, and
46 other commercial transactions to purchase or provide
47 goods or services, currently under negotiation.

48 *c.* Information relating to existing or potential
49 litigation, mediation, arbitration, or governmental
50 administrative proceedings.

1 d. Information relating to existing or potential
2 matters involving governmental administrative
3 proceedings or other proceedings before a government
4 tribunal for enforcement of the declaration, bylaws,
5 or rules.

6 e. Communications with the unit owners association
7 attorney which are otherwise protected by the
8 attorney-client privilege or the attorney work-product
9 doctrine.

10 f. Information that if disclosed would violate
11 another provision of law.

12 g. Records of an executive session of the executive
13 board. However, upon the completion of a matter
14 that is the subject of an executive session held
15 under section 499C.401, subsection 2, paragraph "a",
16 subparagraphs (1) through (4), such records of the
17 executive session shall be available for inspection as
18 provided in this section.

19 h. Records directly related to the personal,
20 health, or financial information of a unit owner, if
21 the person requesting the records is not the unit owner
22 that is the subject of the records.

23 4. A unit owners association may charge a
24 reasonable fee for providing copies of any records
25 under this section and for supervising the inspection
26 of such records.

27 5. The right to inspect records under this section
28 includes the right to copy records by photocopying or
29 other means including copies through an electronic
30 transmission, if available, upon request of the
31 requester.

32 6. A unit owners association is not obligated to
33 compile or synthesize information or records under this
34 section.

35 7. Information or records obtained under this
36 section shall not be used for commercial purposes.

37 Sec. 13. NEW SECTION. 499C.403 Notice to unit
38 owners.

39 1. A unit owners association or an executive board,
40 as applicable, shall deliver each notice required to be
41 given by the association or board under this chapter
42 to the regular mail address or electronic mail address
43 provided by each unit owner. If a regular mail address
44 or electronic mail address is not provided by the unit
45 owner, the notice may be delivered using any of the
46 following methods:

47 a. Hand delivery to the unit owner.

48 b. Mailing by regular mail or certified mail, as
49 defined in section 618.15, to the address of the unit.

50 c. Any other method reasonably calculated to

1 provide notice to the unit owner.

2 2. The ineffectiveness of a good-faith effort to
3 deliver notice under subsection 1 does not invalidate
4 an action taken at a meeting or an action taken by
5 other means.

6 Sec. 14. NEW SECTION. 499C.501 Cause of action —
7 attorney fees.

8 A declarant, unit owners association, unit owner, or
9 any other person subject to this chapter may bring an
10 action to enforce a right granted or obligation imposed
11 by this chapter, the declaration, or the bylaws. In
12 any action brought under this chapter, the court
13 may award reasonable attorney fees to the prevailing
14 party.>

COMMITTEE ON JUDICIARY
ANDERSON of Page, Chairperson